

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BOARD OF PATENT APPEALS AND INTERFERENCES**

Applicant: George R. Borden, IV Group Art Unit: 2622  
Serial No.: 09/823,050 Examiner: Nguyen, Luong T.  
Filed: March 29, 2001 Customer No.: 55648  
Title: CALENDAR-BASED PHOTO BROWSER

**APPELLANT'S REPLY BRIEF**

Chernoff, Vilhauer, McClung, and Stenzel, L.L.P.  
601 SW Second Avenue, Suite 1600  
Portland, Oregon 97204

July 22, 2008

Mail Stop APPEAL BRIEF-PATENTS  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Dear Sir:

**BACKGROUND**

This brief is in furtherance of the Notice of Appeal, filed in this case on May 5, 2007 and the Appeal Brief filed on March 3, 2008.

## **STATUS OF CLAIMS**

### **A. TOTAL NUMBER OF CLAIMS IN THE APPLICATION**

There are 19 claims currently pending in the application.

### **B. STATUS OF ALL CLAIMS**

Claims canceled: 1-32, 45

Claims withdrawn: None

Claims pending: 33-44 and 46-52

Claims allowed: None

Claims objected to: 33, 34-42

Claims rejected: 33-44 and 46-52

### **C. CLAIMS ON APPEAL**

Claims 33-44 and 46-52 are on appeal.

A copy of the claims on appeal is set forth in the Claims Appendix to this Brief.

## **GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL**

The grounds of rejection presented for review are (1) whether claims 33-38, 40-44, 46-48, and 50-52 are unpatentable under 35 U.S.C. §103(a) over Suzuki et al., U.S. Pat. No. 6,590,585 (hereinafter Suzuki), in view of Phillips et al., U.S. Pat. No. 6,186,553 (hereinafter Phillips); and (2) whether claims 39 and 49 are unpatentable under 35 U.S.C. §103(a) over the aforementioned combination of Suzuki and Phillips, and in further view of Peairs et al., U.S. Patent No. 6,085,205 (hereinafter Peairs).

## **ARGUMENT**

Independent claims 33 and 43, from which the remaining claims respectively depend, includes a first limitation of “a calendar portion having a range of displayed dates, each respective said date containing an indicator indicating the existence of one or more files associated with said respective said date.” The primary cited reference, Suzuki, discloses an image browser arranged as a calendar that includes icons inside of date boxes, each icon representative of an image associated with that respective date. Hence, Suzuki discloses this first limitation.

What Suzuki does not disclose, however, is a second limitation found in each of claims 33 and 43, i.e. “a browsing portion enabling a user to selectively increment said range by a month *and alternatively enabling a user to selectively increment said range by a portion of a month.*” (emphasis added). Though the calendar browser of Suzuki displays a range of dates, Suzuki only discloses incrementing the range of displayed dates by a whole month.

Phillips discloses calendar generation software for generating a paper calendar. It is in this context that the disclosure of Phillips, i.e. that a user may set any arbitrary range of dates for the calendar, must be evaluated. When creating a paper calendar using Phillips’ software, a user may select whatever fixed range of dates is desired. What Phillips does not disclose is any technique for incrementing whatever range of dates is used to create the calendar.

Therefore, as already noted by the applicant, Phillips cannot be viewed as teaching any modification of Suzuki so as to include the limitation of enabling both incrementing Suzuki’s displayed range by a month, or by a portion of a month. Because Phillips does not teach incrementing a date range already displayed on a calendar to a new range of dates, one of

ordinary skill in the art would not find it obvious, from Phillips, to modify Suzuki to increment the monthly date range of Suzuki any differently than Suzuki discloses itself.

In response, the Examiner argues that claims 33 and 43 do not positively recite a limitation “allowing a user to select the interval by which the range, whatever its size, is incremented.” This particular language is not necessary for the presented claims to distinguish over the cited prior art; when using this argument in the previously submitted appeal brief, the applicant was merely pointing out that neither reference taught the step of giving the user a *choice* as to the amount by which a displayed range of dates could be incremented.

The Examiner also argues that Phillips’ disclosure of calendar creation software that “could be virtually any size . . . indicates that a person is able to select a portion of a month (i.e. 2 days or 3 days or a week, etc.)” This disclosure of Phillips, however, relates to the selection of the size of the range to display, and not how the range is incremented.

For these reasons, claims 33-34, and 46-552 distinguish over the cited prior art combination of Suzuki and Phillips.

### **CONCLUSION**

The Examiner’s respective rejections of claims 33-44 and 46-52 should be reversed, and the claims should be found patentable.

Respectfully submitted,



Kevin L. Russell  
Reg. No. 38,292  
Attorney for Applicant  
Telephone: (503) 227-5631